



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

259

## REPORT TO MUNICIPAL PLANNING TRIBUNAL

ITEM NO **MPTSW21/07/19**

CASE ID	70460744
CASE OFFICER	N Floris (SJ)
CASE OFFICER PHONE NO	021 444 9540
DISTRICT	Southern
REPORT DATE	29/06/2019

**WARD 73: APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 77504 CAPE TOWN AT SOUTHFIELD, 150 WOODLEY ROAD, PLUMSTEAD**

### 1 EXECUTIVE SUMMARY

Property description	Erf 77504 Cape Town at Southfield
Property address	150 Woodley Road, Plumstead
Site extent	663m <sup>2</sup>
Current zoning	Single Residential Zone 1
Current land use	Dwelling house
Overlay zone applicable	None
Submission date	05/06/2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Unauthorised double garage and associated workshop
Has owner applied for the determination of an administrative penalty	Yes
Has the City Manager applied to the MPT for an order that a person who is contravening the MPBL must pay an administrative penalty in an amount determined by the MPT	No
Has the City issued a demolition directive i.t.o section 128 of the MPBL? If yes, an administrative penalty may not be applied for.	No
Has the City served a notice on the owner or other person in respect of the unlawful land use or building work which required the owner or other person to apply for the determination of an administrative penalty?	No

### 2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal (MPT).

### **3 BACKGROUND / SITE HISTORY**

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- 3.1 A building plan application to permit a garage/workshop was submitted on 12/11/2015 but was subsequently closed as it required a departure that had not been applied for.
- 3.2 A building plan application to permit the same garage/workshop was submitted on 13/05/2019 but has not been cleared as it requires a departure.
- 3.3 The required application for the departure to regularise the garage/workshop has not yet been submitted.

### **4 SUMMARY OF APPLICANT'S MOTIVATION**

The applicant's motivation is attached as Annexure C and may be summarised as follows:

- The owners were under the impression, wrongly received from the professional who drew up the plans, that they had approval to proceed with the building. The plans were submitted but were cancelled.
- The contravention is the extension of the existing dwelling with a new outbuilding housing a double garage and workshop for the owner's private use.
- The work was concluded by the builder 4 years ago.
- There have been no complaints from neighbours and this has no impact on the street or environment as it is set back well from the street.
- The total area of the new structure is 68.74m<sup>2</sup> and is of simple garage construction with no ceiling or expensive floor finish.
- The cost of build of the garage including windows and doors was R200 000.

### **5 ASSESSMENT OF APPLICATION**

- 5.1 The garage/workshop contravenes the 3m common boundary setback prescribed in Item 22 of the Development Management Scheme (DMS).
- 5.2 In terms of section 129(7)(a) of the By-Law, an administrative penalty for a building work contravention may not be more than 100% of the value of the building, construction and engineering work unlawfully carried out.
- 5.3 According to the applicant, the whole area of the unauthorized structure is 68.74m<sup>2</sup>. However, only 18.2m<sup>2</sup> contravenes the MPBL.
- 5.4 The value of the building work contravention is calculated as follows:  
  
R5720.00 x 18.2m<sup>2</sup> = R104 104.00.
- 5.5 An amount which is not more than 100% of R104 104.00 may be imposed as an administrative penalty.

- 5.6 The following factors need to be considered when determining an appropriate administrative penalty, as contemplated by section 129(8) of the By-Law:

**a) The nature, duration, gravity and extent of the contravention**

Nature - The nature of the contravention relates to the addition of a double garage/workshop to an existing dwelling house. This is a permitted outbuilding in Single Residential Zone 1.

Duration - According to the applicant, the unauthorized building work appears took place in 2015. The duration of the contravention is thus long.

Gravity - The gravity of the contravention is low. The garage/workshop is setback a significant distance from the street, is at ground storey and has a low roof height.

Extent - At 18.2m<sup>2</sup>, the extent of the contravention is small.

**b) The conduct of the person involved in the contravention**

According to the applicant, the owners were misled by the person who previously drew up the plans. Even if this is the case, the owner should have insisted on written proof that the building plans had been approved before commencing with the construction. Failure to do so could be regarded as negligent. The conduct of the owners cannot be condoned.

**c) Whether the unlawful conduct was stopped**

The unlawful conduct has not stopped.

**d) Whether a person involved in the contravention has previously contravened by this By-Law or any other planning law**

As far as can be ascertained, the owner of the property has not previously contravened this By-Law or any other planning law.

- 5.7 In view of the abovementioned considerations, and the intention that, to some extent at least, administrative penalties are intended to serve as a deterrent, this Department recommends that an administrative penalty of R2000.00 be imposed.

## **6 REASONS FOR DECISION**

Reasons for the recommended decision may be summarised as follows:

- 6.1 The garage/workshop contravenes the 3m common boundary setback prescribed in Item 22 of the Development Management Scheme.
- 6.2 The duration of the contravention is long.
- 6.3 The gravity of the contravention is low.
- 6.4 The extent of the contravention is small.
- 6.5 The conduct of the owners cannot be condoned.
- 6.6 As far as can be ascertained, the owner of the property has not previously contravened this By-law or any other planning law.

## 7 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of R2 000.00 be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 77504 Cape Town at Southfield regarding the unauthorised building work as shown on the plan drawn by Metaform Architects with project number M1922, drawing number 001, dated June 2019.

## ANNEXURES

Annexure A      Locality map  
Annexure B      Site Development Plan  
Annexure C      Applicant's motivation



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**Section Head : Land Use Management**

Name    P Hoffa

Tel no    021 444 7724

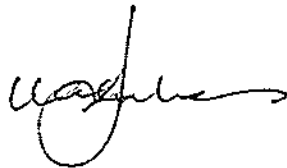
Date      2019-06-29

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**District Manager**

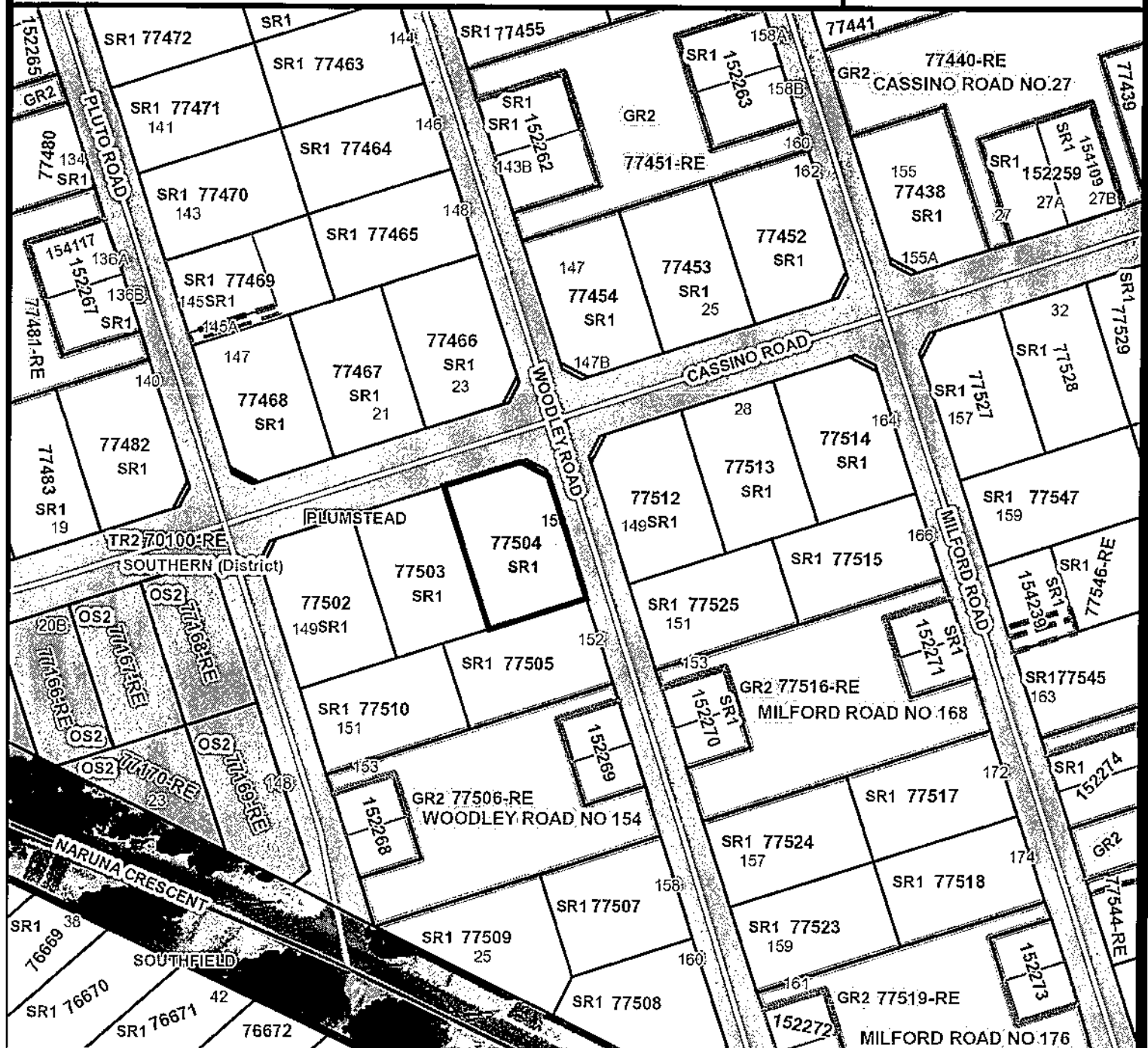
Name    U Gonsalves

Tel no    021 444 7720

Date      2019-07-01

Comment

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**Overview**

Erf: 77504

District: SOUTHERN

Allotment: CAPE TOWN

Suburb: PLUMSTEAD

Ward: 73

Sub Council: Subcouncil 20



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Erf: 77504

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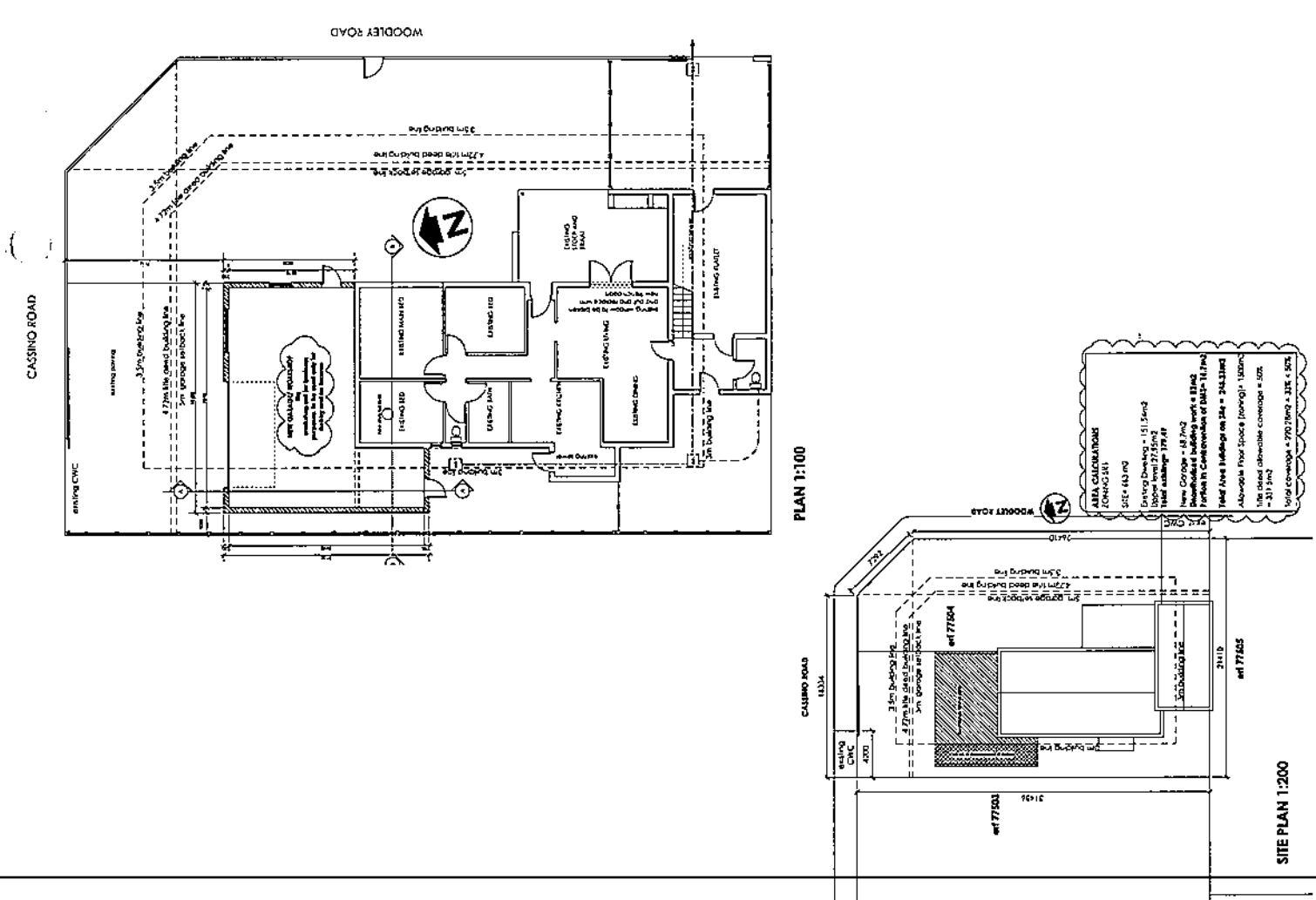
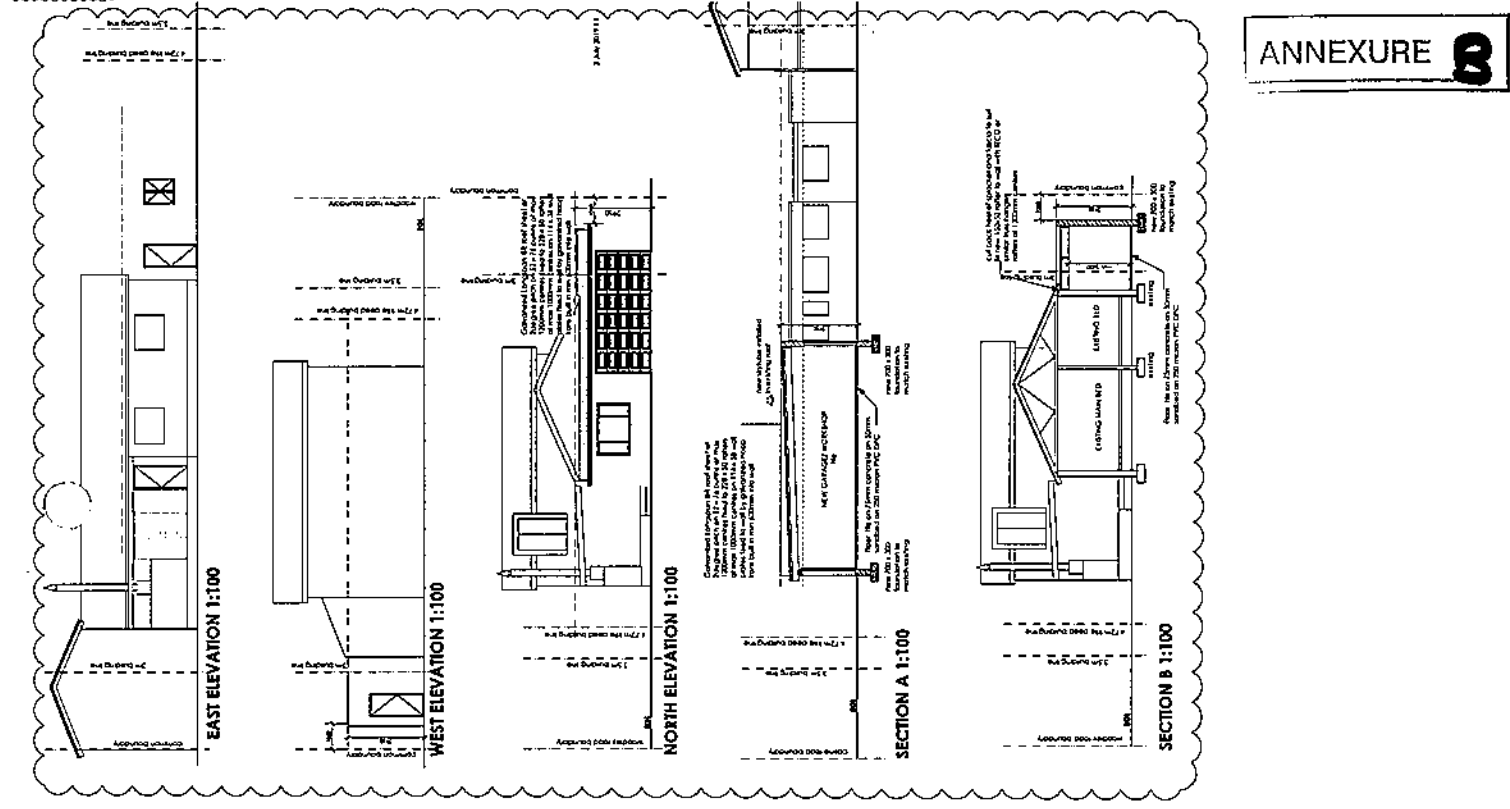
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**APPLICATION FOR ADMINISTRATIVE PENALTY  
ADDITION TO EXISTING DWELLING ERF 77504, PLUMSTEAD  
AT 150 WOODLEY ROAD, PLUMSTEAD**

This application is made on behalf of the owners of the above property as they wish to rectify the completed garage and workshop on site. As per the record for this erf, the owners were under the impression, wrongly received from the professional who drew up the set of plans, that they had approval to proceed with building. The plans were submitted but never completed circulation and were finally cancelled. They have asked me to rectify the situation.

In terms of the MPBL, the applicant should provide background and reason for mitigation of penalty in terms of clause 129 (8)

*(8) When determining an appropriate administrative penalty, the Municipal Planning Tribunal must consider at least the following factors –*

*(a) the nature, duration, gravity and extent of the contravention;*

*(b) the conduct of the person involved in the contravention;*

*(c) whether the unlawful conduct was stopped; and*

*(d) whether a person involved in the contravention has previously contravened this By-Law or a previous planning law.*

In terms of 129(8) (a) The contravention is the extension of the existing dwelling with a new outbuilding housing double garage and workshop for the owners private use. The work was concluded by the builder 4 years ago. There have been no complaints from neighbours and this has no impact on the street or environment as it is set back well from the street. The total area of the new structure is 68.74m<sup>2</sup> and is of simple garage construction with no ceiling or expensive floor finish. The cost of build of the garage including windows and doors was R200 000.

In terms of 129(8) (b), the owners of the property believed that they had permission to proceed with the construction as they were advised by the submitting architect that the work had been approved. Neither the builder or the architect ever advised them that this was not the case, though they asked on several occasions. Plans were submitted but failed to complete scrutiny and were eventually cancelled by council.

In terms of 129(8) (c), no other work has been done without approval.

In terms of 129(8) (d), the owners have not contravened the By-Law or any previous planning law before.

Please review this application in terms of the information provided.